

**SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

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|----------------------------------|---------------------|
| AMERICAN GUARANTEE & LIABILITY) |) |
| INSURANCE COMPANY,) | CIVIL ACTION NUMBER |
| Plaintiff) | 09C-01-170 JOH |
| v.) | |
| INTEL CORPORATION, et al.,) | |
| Defendants) | |

ORDER

And now this 20th day of August, 2009, defendant Intel Corporation having made an application pursuant to Supreme Court Rule 42 for an order certifying an appeal from an interlocutory order/opinion of this Court dated July 24, 2009, and it further appearing that:

1. This is an insurance coverage declaratory judgment action filed by plaintiff American Guarantee and Liability Insurance Company (“AG”) against Intel and fifteen of other insurers of Intel.
2. The coverage issue arises from an anti-trust action in the United States District Court for Delaware filed by Advanced Micro Devices, Inc. against Intel (“AMD Action”). Intel has described that action as potentially larger than the famous Standard Oil anti-trust case.
3. To date, Intel has expended nearly \$100 million in defense costs. There are two trials in the AMD Action scheduled in 2010.
4. Intel sought coverage in the AMD Action by AG which initially declined it. The parties entered into a Standstill Agreement during which information was exchanged. Any information exchanged was to be kept confidential.

5. The Standstill Agreement provided means of termination and a period of time post-termination during which no litigation could be filed. On the first available date, AG filed its action in this Court against Intel and fifteen other insurers. Thirteen and a half hours later, Intel filed a declaratory judgment action against AG only in the United States District Court for the Northern District of California.

6. Several days after filing its action in California, Intel amended its complaint to add a cause of action against AG for an alleged breach of the Standstill Agreement.

7. Intel moved to stay or dismiss AG's action in this Court. AG and two other insurers, Markel American Insurance Company and American National Fire Insurance Company opposed Intel's motion.

8. AG moved to stay or dismiss Intel's California action against it. The District Court denied AG's motion on June 11, 2009.¹

9. In an opinion dated July 24, 2009, this Court denied Intel's motion to stay or dismiss.²

10. This Court considered both actions as "contemporaneously filed" and used the factors of *General Foods Corp. v. Cryo-Maid, Inc.*³ to deny Intel's motion.

11. This Court determined that while the District Court in California could obviously resolve the issues between it and AG, it could not resolve those issues between Intel and its other fifteen insurers who are defendants in the action in this Court. Even though AG has brought a third party action against those same insurers in the California District Court, any potential resolution of issues between all of the insurers will not have any binding affect on Intel.

¹ *Intel Corp. v. American Guarantee & Liability Co.*, 2009 WL 1653014 (N.D. Cal. June 11, 2009).

² *American Guarantee & Liability Co. v. Intel Corp.*, Del. Super., C.A. 09C-01-170 (July 24, 2009).

³ 198 A. 2d 681 (Del. 1964).

12. Intel's motion to stay or dismiss and its application for an interlocutory appeal claim the action in California is more "comprehensive." One basis for that argument is that a claim for breach of the Standstill Agreement must be brought in a "California court." Any such breach claim, however, by its own terms is completely independent of and unrelated to any dispute over coverage.

13. Even though this Court would not have jurisdiction over the breach claim, this Court found AG's action here to be comprehensive. The analysis is set out in this Court's opinion. But there are at least three compelling reasons for this Court's conclusion. One, Intel has sued other insurers for coverage but has done so in a serial fashion, seeking coverage only one insurer at a time. Its suit against AG was its third separate action, and there is no expectation that pattern will end unless all of the insurers and Intel are in the same case. Two, different insurer parties in this Court are not parties to Intel's initiated action in California. The California case may be more comprehensive in so far as Intel's claims (coverage and breach) against AG but it is not comprehensive as to all the insurers on coverage issues. Three, Intel is not bound by the resolution of the AG's third party action in the Northern District of California. This has the potential of creating chaos, additional litigation and more uncertainty.

14. This Court viewed Intel's serial approach to seeking coverage from its insurers one at a time, involving the California Superior Court and two times the United States District Court in California, as already wasteful of judicial resources. It appears highly probable Intel will continue this approach, further wasting judicial resources. This Court's opinion also noted that Markel Insurance has been compelled to intervene in several of Intel's actions, thus putting it to more time and expense.

15. On occasion, the Supreme Court has ruled that a denial of a motion to stay or dismiss determines a substantial issue and establishes legal rights.⁴ That this Court's decision results in Intel having to litigate with sixteen insurers rather than one at a time is substantial. Completeness compels this Court to note that Intel has moved to for a stay of further proceedings in this action pending appeal. AG opposes Intel's motion. Intel's answer to AG's complaint was due August 7th. Intel's reason for seeking a stay is general: it does not want to answer the complaint. It offers no reason why other than that conclusory

⁴*Moore Golf, Inc. v. Ewing*, 269 A.2d 51 (Del. 1970).

statement. This Court found Intel's explanation inadequate and denied its application for a stay. The Court did so consistent with its denial of Intel's application for certification for an interlocutory appeal.

16. Intel takes out of context language used in this Court's opinion (p.41) regarding unknown question of law. The issue involves the "all sums" doctrine to which both California and Delaware subscribe. The context is this:

Unlike the all-encompassing approaches in *Aerojet-General* and *Hercules*, AG and Markel ask this Court to focus on the pattern of conduct taken by Intel in its individual pursuits for coverage. They contend that Intel's behavior, while permissible under an all sums doctrine, will ultimately lead to excessive waste of judicial resources. Neither *Aerojet-General* nor *Hercules* considered such an issue, that all sums entitled an insured to seek coverage in a serial fashion, as here. As far as this Court is informed, the issue is a novel question of law in the context of a motion such as the one before the Court.⁵

17. This Court does not view that comment as (a) establishing new law or (b) suggesting a novel issue of law had to be addressed in reaching its decision. The point is Intel has employed the "all sums" doctrine to undertake its serial approach to insurer coverage. Whether it can or cannot is unimportant. What is important is that AG's action in this Court terminates that approach and this Court did not have to decide on the stay/dismissal motion whether Intel could or could not utilize its individual declaratory judgment actions.

18. Intel argues that this Court's opinion conflicts with a Court of Chancery opinion in *Sprint Nextel Corp. v. iPCS, Inc.*⁶ This Court respectfully disagrees. Chancery in that case stayed its action because a related action in Illinois had all of the parties as opposed to Chancery, which did not. Further, Chancery recognized that its resolution of the issues involved may not have preclusive effect on the issues and parties in the Illinois action. In sum, Chancery determined the Illinois action to be more comprehensive. While Intel cited *Sprint* in its current application, this Court views it as supportive that AG's action is more comprehensive as far as Intel and its insurers.

⁵*American Guarantee v. Intel, supra.* at 41.

⁶ 2008 WL 4516645 (Del.Ch. Oct. 8, 2008).

CONCLUSION

For the reasons stated herein, the Court DENIES Intel Corporation's Application for an Interlocutory Appeal of its July 24, 2009 opinion and order.

IT IS SO ORDERED.

/s/ Jerome O. Herlihy
Judge Jerome O. Herlihy